

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Fareway Stores, Inc.,
Petitioner-Appellant,

v.

Jackson County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-49-0212
Parcel No. 117172430203300

On February 17, 2012, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Fareway Stores, Inc. was represented by Garrett Piklapp, General Counsel for Fareway Stores, Inc., Boone, Iowa. It submitted evidence in support of its petition. County Attorney Chris Raker represented the Board of Review and also submitted evidence in support of its decision. The Appeal Board now having reviewed the record and being fully advised, finds:

Findings of Fact

Fareway Stores, Inc., owner of property located at 110 Westgate Drive, Maquoketa, Iowa, appeals from the Jackson County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2011, assessment and valued at \$2,065,500; representing \$426,600 in land value and \$1,638,900 in improvement value. Fareway's protest form stated "see attached letter" in the area reserved for an equity claim. However, the letter indicates Fareway's claim is that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). The Board of Review denied the protest.

Fareway then appealed to this Board on the same ground. It values the property at \$1,750,000.

The subject property is a 30,724 square-foot, concrete-block and steel grocery store built in 2003. The building has 1224 square feet of finished mezzanine and 1233 square feet of canopy.¹ It is also improved by a 1550 square-foot truck well; two dock levelers; two overhead doors; and two loading docks. The improvements are in normal condition and have 12% physical depreciation. It is located on a 2.86 acre site with 69,400 of asphalt paving, fencing, and yard lighting.

The subject property was purchased from another grocery store chain in June 2008² for \$1,750,000 in an arm's-length transaction. In addition to the real property, the transaction included the purchase of personal property valued by Fareway at \$750,000 for a total purchase price of \$2,500,000. Fareway argues the purchase price of the real property should definitively establish the property's value. This Board notes the transaction occurred two-and-one-half years before the assessment and a 2008 sale is unlikely to reflect 2011 market value.

Fareway provided a list of seven sales of its stores throughout the state, which spanned a ten year period. Additionally, it referenced a listing in Fort Dodge. It reports, that regardless of the location, all Fareway stores are constructed with nearly identical building structure and fixture plans. We find that while this may be true generally, not all can be of the same construction. The record shows the subject property was renovated and others in the record appear to be built-to-suit, reflecting the familiar Fareway design. It asserts all of the properties sold, or were listed, well below their assessed value. Fareway reports the average building sales price was less than half of the assessed valuation. We were not provided details about each property such as gross building area, site size, age, and features.

Fareway also offers a MIT/Moody's Commercial Real Estate Index indicating a national trend since January 2008, of a 50% decline in commercial real estate values. It suggests the 2008 purchase

¹ Only 408 square feet of canopy are valued on the property record card.

² Fareway's correspondence indicates a May 2008 purchase date.

price of the subject property should be similarly reduced. We find this information of little value in establishing over-assessment specific to the subject property's location.

Fareway also submitted information on two other grocery store sales in the State to demonstrate the fair market value of similar properties.

Location	GBA	Yr Built	Sale Date	Sale Price	Unadjusted \$SPSF
10151 University Ave, Clive	23,308		6/1/2010	\$ 1,322,500	\$ 56.74
1800 51st St, Cedar Rapids	106,113	1984	3/19/2010	\$ 5,500,000	\$ 51.83
Subject - Maquoketa	30,836	2003	06/25/2008	\$ 1,750,000	\$ 56.75

Without more information regarding these sales or the specifics of the properties, we are unable to determine their comparability. Fareway also submitted similar Fareway properties' size and location, including the two newest grocery stores in Waverly and Fort Dodge, for comparison of their assessed values to that of the subject property. Assessments from two different assessing jurisdictions are not comparable. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 594-595 (Iowa 1973).

Additionally, Fareway presented assessment data on three commercial properties in Maquoketa, including its primary competitor, Wal-Mart. Fareway is assessed at a greater value per square foot than the unadjusted values of the identified properties. However, we were not provided information on the compared properties such as age, quality, site, and other features to review and such comparison would more appropriately be used in an equity claim than an over-assessment claim. Therefore, we give no weight to it.

The Board of Review submitted a copy of the purchase agreement for the subject property and argues that some of the property transferred, included in the \$750,000 personal property value by Fareway, more properly should have been included in the value of the real property. Specifically, it points out the dock levelers and air conditioning units are included in the *Iowa Real Property Appraisal Manual* used by the Assessor. In its opinion, the depreciated adjusted cost of these items

would be included in the assessment, despite their designation as personal property by the buyer and seller. We agree with the Board of Review that some items in the bill of sale would not be considered personal property or equipment, and would more properly be included in the assessed value of the subject property. We are also mindful that the designation of value to the real estate and personal property/equipment was determined at the convenience of the parties to the sale.

By the method used by the Board of Review, the assessor values the dock levelers at \$24,000 and the electrical and air conditioning at \$294,500. These additions result in revised purchase price of \$2,068,500. Although the costs are adjusted for condition and grade, it is not clear whether they reflect the entire air conditioning system or only the unit, nor is it clear if the costs have been depreciated 12% similarly to the grocery store itself. Ultimately, there is no evidence that this mixed method of adjusting a dated sale price by cost manual figures, produces a credible indication of the subject property's fair market value. We would have more confidence in the results if market-driven adjustments were made and used a more recent sale price.

The unadjusted sales comparables, which includes the subject's 2008 sale, sold with a median of \$56.67 per square foot and the subject property was purchased for \$56.75 per square foot. However, the property with the lowest price per square foot of \$51.83 is approximately three times the size of the subject property and would likely sell for less per square foot. The Clive sale,³ which is the closest in size to the subject property, sold for nearly the same price as the subject property on a per square foot basis. These values are in contrast to the subject property's assessment at \$66.98 per square foot and tend to support Fareway's over-assessment claim.

However, while Fareway has produced two 2010 grocery store sales, few details of these properties were provided to judge if they are comparable to the subject property or need adjustment for

³ The lease/sale terms included a use restriction prohibiting competitive stores in the shopping center.

their dissimilarities. Ultimately, we find that Fareway has failed to prove by a preponderance of the evidence the fair market value of the property as of January 1, 2011.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the

conditions with respect to the other land must be ‘similar’ to the property being assessed.” *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). “Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference.” *Id.* Determining comparability of properties is left to the “sound discretion” of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is “free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value” *Heritage Cablevision*, 457 N.W.2d at 598.

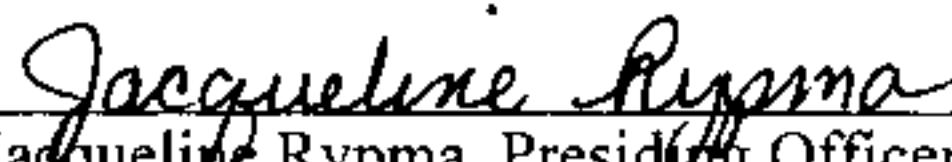
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Findings are “based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” Iowa Code § 17A.12.


Viewing the record as a whole, we determine that the preponderance of the evidence fails to support Fareway’s claim of over-assessment as of January 1, 2011. While the unadjusted sales data may suggest possible over-assessment, the evidence lacked details about the properties to make a reasoned analysis of whether the properties were comparable or had dissimilarities.

Therefore, we affirm the Fareway property assessment as determined by the Board of Review. The Appeal Board determines that the property’s assessment as of January 1, 2011, is \$2,065,500; representing \$426,600 in land value and \$1,638,900 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Fareway property located in Maquoketa, Iowa, as determined by the Jackson County Board of Review, is affirmed.

Dated this 27 day of April, 2012.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Chair


Karen Oberman, Board Member

Copies to:
Garrett Piklapp
General Counsel
Fareways Stores, Inc.
2300 E. 8th Street
Boone, IA 50036
ATTORNEY FOR APPELLANT

Chris Raker
Jackson County Attorney
201 West Platt Street
Maquoketa, IA 52060
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4-27</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	